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7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA

9
10 WILLIAM G. STEWART AND NANCY STEWART,) Case No. CV10-01225 SI
11 Plaintiffs,) STIPULATION AND [PROPOSED] ORDER
12 v.) TO EXTEND MEDIATION DEADLINE
13)
14 BAC HOME LOANS SERVICING, LP) Complaint Filed: March 24, 2010
15 Defendant.) Trial Date: May 16, 2010
16 Hon. Susan Illston
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STIPULATION

WHEREAS, on July 7, 2010, this Court held its initial status conference in this matter. The Court ordered the parties to participate in mediation prior to September 30, 2010, and set a further status conference for September 10, 2010; and

WHEREAS, on September 8, 2010, pursuant to the Stipulation of the parties, the Court continued the status conference to November 2, 2010; and

WHEREAS, the parties were assigned to mediator William F. Alderman through the court-sponsored mediation program.

WHEREAS, on September 16, 2010, pursuant to the Stipulation of the parties, the Court continued the deadline to participate in mediation until October 29, 2010;

1 WHEREAS, defendant has begun the deposition of plaintiff William G. Stewart, but has
2 recently become aware of Plaintiffs' intent to seek damages for emotional distress – which
3 defendant contends was not plead in the Complaint – and which defendant contends will require
4 the deposition to be reopened;

5 WHEREAS, defendant's counsel believes that in order to participate in a meaningful
6 mediation, it will be necessary to complete the deposition with respect to Plaintiffs' evidence of
7 actual damages, if any, including those related to emotional distress;

8 WHEREAS, plaintiffs noticed defendant's deposition pursuant to FRCP 30(b)(6) with
9 respect to six topics, which depositions were ultimately scheduled for October 15, 2010;

10 WHEREAS, on October 14, 2010, defendant notified Plaintiffs' counsel that the witness
11 it had designated to testify on its behalf was not qualified to testify pursuant to FRCP 30(b)(6)
12 with respect to one of the topics, which was Topic No. 6: "BAC Home Loans Servicing LP's
13 investigation of any disputes received from William G. Stewart or Nancy Stewart concerning
14 account #159914281";

15 WHEREAS, plaintiffs went forward with the depositions regarding the five other topics,
16 but plaintiffs' counsel believes that in order to participate in a meaningful mediation, it will be
17 necessary to complete the deposition on the final topic;

18 WHEREAS, defendant is attempting to schedule the deposition of a witness who is
19 qualified to testify with respect to the final deposition topic, but as of yet has not scheduled the
20 deposition;

21 WHEREAS, plaintiffs contend that at least one document relevant to defendant's
22 investigation of plaintiffs' dispute of information on their credit report has not been produced,

1 and that therefore plaintiffs were unable to question defendant's deposition witness concerning
2 the same;

3 WHEREAS, on October 20, 2010, Mr. Alderman realized, during a conversation with
4 counsel for plaintiffs and defendant, that he had a conflict of interest and therefore withdrew as
5 mediator, just two days before the previously scheduled mediation;

6 WHEREAS, the parties request that the mediation deadline be delayed so as to meet and
7 confer concerning Plaintiff's further deposition and defendant's Rule 30(b)(6) deposition, and to
8 allow time to appoint a new mediator and schedule a new mediation session; and

9 WHEREAS, the parties continue to make progress on discovery and do not seek this
10 extension of time for any improper purpose such as delay:

11 IT IS THEREFORE STIPULATED by and between Plaintiffs and Defendant, through
12 their undersigned counsel of record, that good cause exists to continue the upcoming deadline to
13 conduct mediation from October 29, 2010 by approximately 60 days, and the parties therefore
14 request such a continuance.

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SO STIPULATED

19 Dated: October 28, 2010

20 LAW OFFICE OF WILLIAM E. KENNEDY

21 _____/s/
22 Attorney for Plaintiffs William G. Stewart and
23 Nancy Stewart

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25 Dated: October 28, 2010

REED SMITH LLP

26 _____/s/
27 Attorneys for Defendant BAC Home Loans
28 Servicing, LP

1 PURSUANT TO STIPULATION, it is ordered that the deadline to conduct mediation is
2 continued until 01/14/11

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4 The November 2, 2010 CMC is
5 continued to January 28, 2011.



6 Hon. Susan Illston
7 U.S. District Court Judge

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11 **ATTESTATION PURSUANT TO GENERAL ORDER 45**

12 I, William E. Kennedy, hereby attest that concurrence in the filing of this document has
13 been obtained from the other signatory(ies). I declare under penalty of perjury under the
14 laws of the United States of America that the foregoing is true and correct. Executed this day
15 of October 28, 2010 at Santa Clara, California.

16 /s/

17 William E. Kennedy